Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF THE

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

and

WRITERS GUILD OF AMERICA, EAST

Dated: January 2, 2003

I. INTRODUCTION AND SUMMARY

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA") and the Writers Guild of America, East (WGAE). AFTRA is a national labor organization with a membership of over 80,000 professional employees working in the news and broadcast, entertainment, advertising and sound recordings industries. WGAE is a labor union representing professional writers in television, radio and film. On behalf of its members, AFTRA and WGAE submits these comments in response to the Commission's Notice of Proposed Rule Making, MB Docket No. 02-277 and MM Docket No. 01-235, issued on September 23, 2002, initiating a comprehensive review of the remaining media ownership rules.

2. AFTRA's membership includes news reporters, anchors, sportscasters, talk show hosts, announcers, disc jockeys, producers, writers and other on-air and off-air broadcast employees as well as actors, singers and other performers on dramatic programs, game shows, talk and variety shows and other entertainment television programming. AFTRA members work at networks and in stations in markets of varying size throughout the United States. In addition, AFTRA also represents royalty artists and background singers whose sound recordings are played on radio stations.

3. Entities that employ AFTRA broadcast members include the three major networks and Fox and their owned and operated stations, as well as local radio and television stations owned by over 40 independent and group owners, as well as all the major record labels, advertising agencies and television producers. AFTRA maintains several hundred collective bargaining agreements with these employers nationwide.

4. AFTRA has previously filed comments with the Commission in the matters of MM Docket Nos. 98-35, 98-37, 91-221 and 94-322, relating to the national television ownership rule, the local radio ownership rule, and the effects of consolidation in the broadcast industry since the

passage of the Telecommunications Act of 1996 (the "Telecom Act"). The WGAE has previously submitted comments to the FCC in the matters of CS Docket Nos. 98-82 and 96-85 and MM Docket Nos. 92-264, 94-150, 92-51 and 87-154 related to Broadcast and Cable regulations.

5. AFTRA and WGAE have a uniquely "inside" view of the urgent need to maintain the remaining broadcast ownership rules because AFTRA and WGAE represent those professionals who work in the newsrooms and on the programming that have been and will continue to be hurt by further media consolidation.

6. Based on the first hand experience of its members as well as the available empirical data, AFTRA and WGAE submit that it is necessary and appropriate for the Commission to maintain the remaining broadcast ownership rules in order to protect diversity and localism in the news and information available to the general public, to protect against anti-competitive business practices, and to prevent any further erosion of innovation in media programming.

II. PROMOTING VIEWPOINT DIVERSITY MUST CONTINUE TO BE THE COMMISSION'S PRIMARY GOAL IN ITS MISSION TO PROTECT THE PUBLIC INTEREST

7. As the Commission has long maintained, and the courts have confirmed, the promotion of viewpoint diversity is a proper component of the Commission's mission to promote the public interest.[1] The media is the lifeblood of American democracy and culture, and local communities should be served by a media marketplace that delivers the "widest possible dissemination of information from diverse and antagonistic sources." [2] Further, as the courts have also confirmed, ownership limits are a rational and constitutional method of ensuring editorial and viewpoint diversity.[3]

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[1] Fox Television Stations, Inc. v. FCC, 280 F.3d 1027, 1042 (D.C. Cir. 2002); Sinclair Broadcasting Group v. FCC, 284 F.3d 148, 160 (D.C. Cir. 2002)
[2] Turner Broadcasting System, Inc. v. FCC, 51 U.S. 622, 663-64 (1994)
[3] Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 571 n.16 (1990), overruled on other grounds, Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995); NCCB, 436 U.S. at 796-97

8. We are pleased and encouraged that the Commission is committed to preserving the public's access to a diversity of viewpoints through the media, Notice, ¶35, and we submit that the actual experiences of the media industry, Notice ¶ 43, show that the ownership concentration that has been made possible by the weakening of ownership limits to date has resulted in diminished editorial and viewpoint diversity, particularly in the delivery of news and public affairs programming.

9. The Commission seeks comment on whether it should continue to seek outlet and source diversity as proxies for viewpoint diversity. Notice ¶ 42. AFTRA and WGAE submit that based on the experience of the media industry to date, as will be shown below, it is clear that viewpoint diversity cannot be ensured without mandating <u>source</u> diversity because media conglomerates do not provide distinct media voices for their own properties. Source diversity, defined as independent ownership over media outlets, is critically essential for protecting not only the delivery of diverse viewpoints in news and information, but also for protecting against a loss of local control over the media and anti-competitive business practices that ultimately harm the media industries and our culture.

III. THE MODERN MEDIA MARKETPLACE, EVEN WITH ITS APPARENT MULTIPLICITY OF OUTLETS, CANNOT ENSURE DIVERSITY, LOCALISM, AND COMPETITION ABSENT CLEAR AND STRICT RULES TO LIMIT MEDIA CONSOLIDATION

A. Although the Number of Media Outlets Has Increased, Media Ownership Has Become More Concentrated and the Rate of Growth of New Outlets Has Decreased

10. It is undisputed that since the broadcast ownership restrictions were weakened by the Telecom Act, the concentration of media ownership has grown dramatically. Further, while there has been a proliferation of new types of media outlets during the same period, including cable, the Internet, DBS and satellite channels, etc., it is also undeniable that the overall rate of growth in the number of media outlets in general has <u>decreased</u> at the same time that media ownership has

become more concentrated. Thus, media concentration is associated with an overall decrease in the rate of growth of media outlets.

11. In S.J. Roberts, et al. "A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960, 1980, 2000" (Study #1), sponsored by the Commission, the data revealed that the growth of media outlets has slowed considerably as media ownership has consolidated since 1980. This is in sharp contrast to the rising growth rate of outlets in the preceding period, 1960 –1980, during which time the ownership limits limited media consolidation.

12. Indeed, in another Commission sponsored study, G. Williams and S. Roberts, "Radio Industry Review 2002: Trends in Ownership, Format, and Finance," (Study #11) ("Williams and Roberts study"), the data revealed a definite link between media concentration resulting from the weakening of the radio ownership rules and a sharp drop in the rate of growth in the number of radio outlets. As Dr. Dean Baker of the Center for Economic and Policy Research explains in his report filed with Commission on December 19, 2003 ("Baker report"), the Williams and Roberts study examined changes in the radio industry over the 6 years following the weakening of the radio ownership rules by the Telecom Act. The study found a sharp increase in concentration over this period. The study found that since the 1996 rule changes, the number of distinct owners fell by 34 percent while the growth rate in radio stations slowed. Specifically, it found that the four firm concentration ratio (as measured by shares of ad revenue) grew from less than 65 percent in 1996 to more than 85 percent in 2002. [4]

13. Similarly, another Commission sponsored study, J.M. Levy and J. Walfogel, 2002 "Does the New York Times Spread Ignorance and Apathy?" 2002 (Study #12), presented evidence of diminished growth in the number of broadcast television stations comparable to the evidence for slower growth in radio outlets found in Williams and Roberts. Specifically, the data

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[4] Baker report, pp. 17 – 18.

indicates that there has been a sharp slowdown in the rate of growth in the number of broadcast television stations over the last ten years. Between 1980-85, the total number of stations grew by 18.4 percent, and between 1985-90, it rose by 20.5 percent. But over the first half of the 1990s, the growth rate was only 6.2 percent, and during second half, it fell to 5.7 percent. As pointed out by Dr. Baker, this fall-off was particularly dramatic and lamentable in the number of educational stations, which far exceeded the fall off of all stations. Indeed, there has been zero growth in educational broadcast television since 1995.[5] "Clearly," Baker concludes, "education has become a less important function in television in the last decade." Id.

14. Thus, the data shows that the weakening of the ownership rules during the last twenty years has led not only to overwhelming media ownership consolidation, but also to a reduction in the rate of growth in number of radio and television stations, and in particular, to a halt in the number of educational television stations. The Commission should view this trend with alarm because, as shown below, the implication of this data is a sharp reduction in the quality and diversity of news and other information and programming that is available to the general public.

B. The Public Does Not Substitute Among the Different Media

15. The Commission seeks comment on the question of whether consumers view the new media, i.e., cable, the Internet, satellite, DBS and DARS, etc. as sources of local news and information, and whether these changes in the marketplace should the Commission's analysis of the need for ownership limits.[6] The proponents of loosening ownership caps argue that ownership restrictions are no longer are needed because there are now so many different sources of news and information that if a viewer can't get information from one type of media, they can go to another. This argument of the "substitutability" of media outlets assumes that different media outlets serve the same purposes for the same markets. As the available empirical evidence shows, however, this

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[5] Baker report, p. 21.

assumption of substitutability is simply wrong. The television, radio, and newspaper industries are unique and consumers use them differently than any other outlet.

16. In the Commission sponsored study by Waldfogel,[7] the data shows very weak substitutability between media outlets and sources. Indeed, in his executive summary of the study results, Waldfogel cautions the Commission against any reliance on the data submitted, stating that while there was some limited evidence of substitutability, "even if substitution operates, it is not complete in this sense," i.e., that civic behaviors affected by media consumption [such as voting] would be unaffected by "the changes in the availability or use of any particular medium."[8]

17. As explained by Dr. Baker in his report on Waldfogel's study:

> The evidence uncovered by these methodologies shows very limited substitution between media. In the case of the first methodology the only substitutions that are significant at even a ten percent confidence level are the substitutions between access to radio outlets and cable use, access to radio news and Internet use, access to daily papers and cable use, and the circulation of daily papers and cable use. This methodology finds <u>no</u> evidence of substitution between cable television usage and broadcast television usage, between Internet usage and broadcast television usage, between newspaper usage and Internet usage, or any other types of substitution that have frequently been suggested."[9]

18. Dr. Baker explained that these findings were "far too weak to provide a basis for policy" (consistent with Waldfogel's caveat in his executive summary as noted above) as "economists are usually hesitant to attribute very much importance to a result that is statistically significant at just a 10 percent level." Moreover, the findings in Waldfogel's second methodology, which controlled for "obvious determinants of news use, such as income and

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[6] NPRM ¶¶ 23, 77.
[7] Waldfogel (2002, Study #3)
[8] Waldfogel (2002, Study #3), pp. 3-4
[9] Baker report, p. 10 (emphasis added)

education, found only limited substitution (again, at only a very weak statistical standard of significance) between Internet usage and television.[10]

19. In sum, what Waldfogel's studies show is not that people substitute between different media outlets for news, but just the opposite – that media outlets are complements, i.e., people who get more news from one source such as television, are also likely to get more news from a second source, such as a daily newspaper" and that "reduced access to news in any medium could lead consumers to get significantly less news generally, as they would be less likely to seek out news from other media." Id.

20. More important, as Baker points out, in Study #3, Waldfogel cites and incorporates the findings of an earlier study he conducted with L. George,[11] which revealed "a statistically negative relationship between New York Times readership and voting in local elections for college educated people" as well as a "statistically negative relationship between New York Times readership and readership of local newspapers."[12] Based on Waldfogel's studies, Baker warns that "there could be very significant unintended consequences [in civic behavior] from changes in the availability of different types of media" and specifically, in the availability of local news.[13]

21. The Waldfogel data is consistent with the data submitted to the Commission by commentator the Consumers Union in its comments on the Newspaper/Broadcast Cross-ownership rule, which found that most local communities simply did not utilize cable, DBS, or the Internet as significant sources for news. This study found that only about 4 percent of consumers

[10] It should also be stated that while the study also noted certain other types of substitution, these other findings were noted at "a very weak standard of statistical significance (a t-statistic exceeding 1 in absolute value)," which, as Baker reports, "economists usually just dismiss . . . as 'statistically insignificant.'" Id. at p. 10. Baker report, p. 11.

[11] George L. and J. Waldfogel, 2002 "Does the New York Times Spread Ignorance and Apathy?" The Wharton School. http://rider.wharton.upenn.edu/waldfogej/workpap.html; Waldfogel p. 10.
[12] Baker report, p. 12; Waldfogel Study #3, p. x.
[13] Baker report, p. 12.

use the Internet for news,[14] cable news channels are limited to the top 25 markets and rarely obtain shares of the audience above 2 percent.[15]

22. It should be noted that the other Commission sponsored study that purported to provide data on the substitutability of media outlets, the study by Nielsen Media Research, 2002 "Consumer Survey on Media Usage" (Study #8), while limited in its usefulness, does support Waldfogel's findings. In the Nielsen study, respondents were asked about their current media usage for news and the responses were that close to 85% of respondents identified television and 63% identified the local newspaper as their source for news and information. While the Nielsen study then appears to show that people intend to engage in greater substitution among media in the future, this speculation is not based on evidence of the actual behavior of respondents, but, instead on an opinion survey of what people think they may do in the future. As Baker explains, this data is unreliable because people may think that they will behave in a manner that is different from how they actually behave.[16] Baker adds that most economists believe that "observations of actual behavior provide a more reliable guide for policy than surveys in which respondents indicate how they think they would behave," and that the beliefs stated in the Nielsen opinion survey would necessitate a substantial turnaround from people's actual practice to date, as shown by the responses to inquiries of respondents' current media usage in the Nielsen survey as well as the data in Waldfogel's studies, among others.

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[14] Comments of Consumers Union, Consumer Federation of America et al, *In the matter of Cross-Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, No. 96-97, Dec. 3, 2001 86 ("CU Comments, NBCO"), at 91ff.
[15] Douglas Gomery, *The FCC's Newspaper-Broadcast Cross-Ownership Rule: An Analysis*, Washington D.C.: Economic Policy Institute, February 15, 2001 ("Gomery report"), at p. 5.
[16] Baker report, p. 13.

C. New Technologies Have Only a Marginal Role in Providing News And Public Affairs Programming to Local Communities

23. The new media marketplace is also unable to provide diversity of viewpoint without regulatory ownership controls because these new media outlets still have a marginal role in providing news and information to the general public.

24. As explained by Baker, the simple number of media outlets available in a local community does not provide a basis for determining the range of choices available to consumers. Baker explains: "The number of outlets may provide little information about the range of choices available to consumers. If a small number of outlets are able to dominate the market, the availability of a large number of very small outlets could mean little to either consumers or advertisers.[17]

25. This is why the findings of Roberts et al. (2002) (Study #1), which purports to show the broad range of consumer choices available in the media marketplace today is flawed and misleading. This study is not a reliable basis for assuming consumer choice because it does not take market shares into account. Any serious study of local media markets must, at a minimum, analyze the market share of the different outlets. The broadcast television or radio or newspaper outlet is simply not the same as the Internet or other new media outlet that simply provides advertising or entertainment.

26. By contrast, the empirical evidence submitted to the Commission by the Consumers Union in its comments on the Newspaper/Broadcast Cross-ownership rule is directly relevant to the question of how relevant the new media outlets are in providing news and information to local communities. The CU study found that most local communities simply did not utilize cable, DBS,

[17] Baker also faults the study for not breaking out the trends in radio and television stations, which are lumped together under the category of broadcast outlets. Baker report, p.15, 17.

or the Internet as significant sources for news. This study found that only about 4 percent of consumers use the Internet for news,[18] cable news channels are limited to the top 25 markets and rarely obtain shares of the audience above 2 percent.[19]

27. Although developing technologies have made possible new media outlet forms, these new media outlets are simply not yet used as a news and information source by a significant number of Americans and cannot be seen as voices equal to the traditional radio, television and newspaper outlets for purposes of evaluating diversity of viewpoints in the marketplace.

D. The New Media Outlets Are Controlled by the Same Media Conglomerates That Control the Traditional Media

28. Finally, the available evidence makes clear that not only do these new media outlets represent limited market shares, they also cannot be deemed to be distinct voices in the marketplace because they are owned and controlled by the same media conglomerates that control radio, television, and newspapers.

29. A local cable news network or Internet site is not a different voice when in fact it is owned and its content is provided by the local newspaper or TV station. The top two cable system owners, AT&T and AOL Time Warner have over 27 million subscribers, accounting for 40 percent of all cable households. Two companies control the direct-broadcast satellite market. The five broadcasting networks also dominate cable programming (ABC, Viacom, AOL Time Warner, GE, and News Corp.)[20]

30. Because of their limited audience and market share and because they are largely owned and controlled by the same conglomerates that own the dominant media of television, radio and newspapers, new media outlets simply cannot be taken into account when evaluating the

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[18] CU Comments, NBCO, 91ff.
[19] Gomery report, p. 5.

number of voices in a media marketplace, particularly for the delivery of news and public affairs information. The simple fact of the multiplicity of these new outlets should not be considered evidence of viewpoint diversity in the Commission's consideration of the continued importance of broadcast ownership limits.

IV. THE COMMISSION SHOULD RETAIN THE REMAINING LOCAL OWNERSHIP RULES

31. As the empirical and anecdotal evidence make clear, the remaining local ownership rules, namely, the local television multiple ownership rule; the radio television cross-ownership rule; the newspaper/broadcast cross ownership rule; and the remaining local radio caps are essential tools by which the Commission may can protect the availability of diverse views, information and innovative programming to local communities.

A. The Wave of Media Consolidation Made Possible To Date Has Resulted in Less Diverse Local News Programming

32. As the Commission notes, Notice ¶ 80, it is quite true that when media owners acquire additional properties in a local marketplace, they seek to reduce operating expenses by combining existing news operations or local station staff in order to produce one newscast or news product for all of its properties in a market. This process, often referred to as seeking to achieve "synergies" in the marketplace, has had adverse effects in numerous communities across the country.

33. As consolidation of media ownership increases, the public's access to diverse sources of news and information decreases. Where a community once received its news and public affairs programming from a number of different outlets, as media conglomerates gobble up more local news outlets, media conglomerates reuse, recycle and repurpose the same editorial content for broadcast on all of their radio and television stations, to print in their newspapers, and to post on

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[20] Dean Alger, *Megamedia*, Lanham, MD: Rowman & Littlefield Publishers, Inc.,1998, 91.

their websites. Several outlets contain virtually identical content, produced from one assignment desk, under the management of one general manager, one news or program director, and with essentially, one overall editorial viewpoint. Notwithstanding the fact that these reports may appear on a number of distinct stations, newspapers or websites, the content and editorial perspective is indistinct. In a significant number of instances, media properties are moved into the same physical facility. Still, even where stations are left in different facilities, the experience of the professionals working at these stations is that the media conglomerates drive to synergize results in fewer employees providing identical content to multiple outlets.

34. Examples of the loss of newscasts or the sharing of news product among various media properties in a local market as a result of media consolidation abound nationwide. Just today, the New York Times reported that the International Herald Tribune would appear "under the sole ownership and management of The New York Times Company."[21] Not only will the contents of The Tribune come increasingly from the New York Times, but the executive director of The Times will oversee the news operations of The Tribune. Charles L. Robertson, a professor emeritus at Smith College and author of a history of The International Herald Tribune wonders whether The Tribune will become "a world edition of the New York Times" and believes that "[p]eople will miss the variety."[22] This combination of news will undoubtedly diminish the diversity that previously existed.

35. In Kansas City, Entercom is using the newspersons at one of its radio stations, KMBZ-AM to provide news reports on the other stations it owns in that market. Prior to the loosening of the ownership caps, separate and distinct news programs were produced for WDAF-AM and KUDL-FM. Prior to Entercom's purchase of powerhouse country station WDAF, WDAF had its

[21] Kirkpatrick, David D. "International Herald Tribune Now Run Solely by The Times" *New York Times* (January 2, 2003).
[22] *Id.*

own news operation with 6-7 full-time employees. KMBZ and WDAF were the two main competitors for radio news in Kansas City. Entercom dismantled the entire news department at WDAF. KMBZ reporters now appear on WDAF reporting the same stories covered on KMBZ. These programs no longer exist, and accordingly, there is less diversity in news programming in the Kansas City market than before.

36. In Dayton, Ohio, Sinclair Broadcasting Co owns WKEF-TV and WRGT-TV, an NBC affiliate and a Fox affiliate, respectively. The general manager of both stations recently announced that both stations could eliminate locally produced weekend weather reports as early as February. Instead of weekend weather reports that originate in Dayton, both stations plan to air weather reports from a weather center at Sinclair's home office in Baltimore. Sinclair is already broadcasting weather reports in Flint, Michigan that are produced at the company's Baltimore headquarters. In Dayton, diversity suffers because Sinclair provides the same content on its two television stations. Consolidation has eroded localism in Dayton and Flint, as well, in that Sinclair is no longer producing weather reports locally, when the local nature of weather reporting is plainly of interest to the local community.

37. In Chicago, Westinghouse-owned WMAQ-AM had been an all-news station since 1989. Westinghouse bought CBS and later merged with Viacom in the '90s. The merged company's radio division, Infinity, also owns the all-news format station WBBM-AM. In 2000, Viacom/CBS/Infinity determined that it was no longer profitable for it to compete against itself, so it shut down WMAQ-AM in 2000. Because WMAQ-AM and WBBM-AM were the only all-news format stations in Chicago, when Viacom killed WMAQ-AM, it was killing WBBM-AM's only competition, leaving Chicago with only one all news radio station. Although these moves may have been highly profitable for Infinity, they were hardly in the public interest. Though some news may be available on other radio stations to a lesser degree, many of these remaining stations

in Chicago are owned by Infinity, or receive news-reports from Shadow and/or Metro Networks, reporting services owned by Westwood One, also part of the Viacom/CBS conglomerate.

38. The same has been true even in the limited situations where companies have been permitted to own the dominant newspaper and television station in a market. In Chicago, Tribune Co. executives boast that theirs is a "content company" in which the *Chicago Tribune* and its other newspapers are used as "content factories" for online sites, local television stations and cable news outlets.[23]

39. Similarly, in Tampa, Florida, Media General brought together its print, television and online operations under the same roof in the same building in order to create a single news-gathering operation to feed the same stories to its print, television, and web outlets. Last year it reported more than 600 "acts of convergence," defined as print, broadcast and Web staff working together to report one story.[24]

40. The erosion of diversity and localism in these local markets exists in many other markets as well, and will be exacerbated by any further loosening of the television and radio local ownership rules. These situations are diametrically in conflict with the Supreme Court's vision of a robust media marketplace providing "diverse and antagonistic" viewpoints to the public.

B. Media Consolidation Has Harmed the Delivery of News to the Public by Making Profit Margins, Rather Than Journalistic Excellence, the Goal of New Operations

41. Not only does media consolidation result in the sharing of news product, but as has been widely reported, media conglomerates put extraordinary pressure on local broadcast stations and newspapers to reduce their costs in order to increase profits, with adverse consequences for

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[23] Autletta.

[24] Rabasca, Lisa. "Benefits, Costs, and Convergence" *Presstime Magazine* (June 2001) (www.naa.org/presstime/0106/convergence.html).

local news coverage.[25]

42. Previously, broadcast stations treated news and public affairs programming as a service to the local community and competed for viewers and ratings by seeking to achieve the "best" story or highest quality of journalism. Today's media conglomerates treat news only as a programming option that must be justified by the highest of profit levels, with far different results in the nature of the news and public affairs programming delivered to the public. Now, where a media company owns a disproportionate share of the market, it is less profitable to spend resources in investigating (also known as "enterprising") a story. Rather, news outlets increase their profitability by recycling and re-purposing their competitors' product, in exchange for marketing opportunities. Owners of several properties in a market, such as radio, television, and cable stations and a newspaper, can offer advertisers a broad customer reach with which competing media companies that do not control different outlets cannot compete. In order to compete, other media companies in a market will not seek to elevate the quality of their newscasts, rather, they respond by getting access to re-use their competitors' content so as to achieve similar "synergies" that appeal to advertisers.

43. For example, CBS is scrambling to share news content with the *Chicago Sun Times* in order to compete with the Tribune Company, which owns a newspaper (the *Chicago Tribune*), a local cable news network (CLTV), a broadcast TV station (WGN-TV) and a radio station (WGN-AM). CBS and the *Chicago Sun-Times* recently announced a partnership to share news reporting functions. The ultimate effect is that there is less diverse content available in the market because even when properties are not jointly owned, they enter into partnerships to share content in order to compete with the those players in the market who are already synergized. Because of these competitive pressures, ownership concentration affects the nature and quality of news and public

[25] Thomas Kunkel and Gene Roberts, "Leaving Readers Behind: The Age of Corporate Newspapering." Vol. 23, No.

affairs programming of all the media outlets in a local market dominated by one group owner.

44. This global effect of ownership concentration on local markets is, in part, why the conclusions reached in one of the FCC studies on the effects of consolidation on broadcast television are flawed. In the study conducted by T.L. Spavins, et al, "The Measurement of Television News and Public Affairs Programs," (Study #7), the authors compared the viewership ratings, awards received, and weekly hours of news of network owned stations and network affiliates on a national (rather than local) level. The study concluded that network owned stations outperformed the affiliate stations. This conclusion is of little value to the Commission in evaluating the policy implications of further deregulation of media ownership, because the study did not review such measures of quality over time. The study only compared stations operating in a consolidated marketplace with the cost pressures caused by the horizontal and vertical integration of media companies. In other words, it may be that based on the measures used, network owned stations may currently outperform affiliates based on the criteria used, but this does not mean that network owned stations would necessarily have outperformed affiliates prior to the spate of media consolidation. Further, network owned stations may outperform affiliates based on the measures used for reasons other than their current ownership, such as because the network owned stations could also have shared the characteristics of being the oldest or more established stations in their markets.[26]

45. Further, there is data showing that local radio news is another casualty of consolidation. According to Vernon Stone, professor emeritus at the University of Missouri's

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4 *American Journalism* Review (May 1, 2001), at p. 36.

[26] It should also be noted that the conclusions of the Spavins study were flatly repudiated in an analysis recently submitted to the Commission by the Network Affiliated Stations Alliance (NASA) and the National Association of Broadcasters (NAB), which demonstrates that the data collected by Spavins, when controlled for market size, actually showed no difference in the amount of local news aired by network owned and independently owned affiliates and that network owned stations were actually less likely to receive prestigious awards than independently owned stations in the top ten markets. See Early Submission of the National Association of Broadcasters and the Network Affiliated

School of Journalism, only 67 % of radio stations today have news operations, accounting for only 12,000 employees, of which 50 % are only part-time. This is a dramatic decrease from 1982, when 98% of the radio stations in the country had news operations, with 64% of the 19,600 news staff working full time.[27]

C. Corporate Owners Exert Control Over Local News Reporting Decisions

46. Another way that ownership concentration has stifled diversity and localism in the delivery of news is that when local stations are acquired by media conglomerates, the decision-making power and control over news gathering and reporting are taken away from local station representatives and concentrated in the hands of corporate managers often operating in another city or state. The Commission is quite correct in seeking information from the public on the issue of the extent of corporate control over local news and programming decisions. Notice, ¶ 81. The independence of local stations is critically important for ensuring media diversity and localism.

47. Although media companies may claim that they do not exert control over news decisions in the local markets, this is simply not borne out by actual experience. In AFTRA's experience, local broadcast station contract negotiations are generally conducted by corporate, rather than local station representatives, with corporate demands often taking precedence over local issues. Further, local general managers will receive specific mandates regarding the types of stories to be investigated and reported. Indeed, there are several examples of news stories being "killed" because they dealt with topics that corporate management did not want to see reported.

48. For example, after Disney bought ABC in 1995, Disney CEO Michael Eisner said in an interview on NPR's "Fresh Air," "I would prefer ABC not cover Disney." Shortly after this interview was broadcast, it was widely reported that ABC killed a story which examined whether

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Stations Alliance: "The Measurement of Local Television News and Public Affairs Programs" Analysis of Media Ownership Working Group Study, filed with the Commission on December 9, 2003; see Baker report, pp. 7 – 9.

[27] Stone, "News Operations at U.S. Radio Stations" (http://www.missouri.edu/~jourvs/graops.html).

Disney's policy of not running criminal background checks on all new hires allowed for the employment of convicted pedophiles at its theme parks and resorts.[28]

49. NBC killed a story about how its corporate parent, General Electric, was selling used airplane parts as new. The story did not run until the reports of its cancellation created a storm of negative publicity. Reports that NBC's corporate ownership controls the news that is reported on NBC's stations and networks, particularly related to General Electric, are rife with examples.[29]

50. On April 30, 2000, the Pew Research Center for People and the Press and the Columbia Journalism Review released a study showing that 41% of over 300 reporters surveyed reported that they had intentionally avoided newsworthy stories or softened the tone of stories to benefit the interests of the corporate news organizations.[30]

51. NASA has consistently opposed the weakening of the Commission's television broadcast ownership limits in large part because of the control exerted by corporate owners over programming decisions by local station management, including imposing serious financial penalties, for the pre-emption of network programming for programming of interest to a local community.[31] In NASA's filing in the Fox case, it cited the example of NBC initially imposing serious fines on affiliates that were considering the pre-emption of the Game One of the American League Division Series in order to air the first presidential debate.[32] Even where such corporate demands are not issued explicitly issued, since local station management knows that the corporate office controls the local station's budget, they will often not risk incurring the displeasure of

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[28] See Brill's Content, December 1998/January 1999, http://www.people.vcu.edu/~dcroteau/370%20Media/mouse-ke-fear.html; See also Media Musings, Volume 19, Issue 51 (December 17, 1998) (http://www.shepherd-express.com/shepherd/19/51/news_and_views/media_musings.html)
[29] Jim Naureckas, *Extra!,* December/November 1995 (FAIR) (http://www.fair.org/extra/9511/nbc.html). *See also* FAIR, "Bringing the Facts to Light", *Extra! Special Gulf War Issue* (1991) (http://www.fair.org/extra/best-of-extra/gulf-war.html#genbc)
[30] See "Self Censorship: How Often and Why, Journalists Avoiding the News," April 30, 2000, Pew Research Center for People and the Press, www.people-press.org
[31] See Brief for Intervenors National Association of Broadcasters and Network Affiliated Station Alliance, filed May 7, 2001 in Fox Television Stations et al. v. FCC, 280 F.3d 1027 (D.C. Cir. 2002).

corporate executives.

52. Finally, news professionals report that media ownership concentration has put enormous pressure on their journalistic independence because there are so few potential employers in the media marketplace today, on both the local and national levels, that few news professionals will risk alienating themselves by confronting or challenging unreasonable demands by these media companies.

D. It is Appropriate for the Commission to Utilize a Narrower "Voice" Test For Purposes of Evaluating the Television Multiple Ownership Rule Because Of the Unique Nature of Broadcast Television and Its Role in Providing Local News and Public Affairs Programming to Local Communities.

53. It is entirely appropriate for the Commission to use a "voice" test for the local television ownership rule that is distinct from the "voice" test used for purposes of other ownership rules.

54. First, as the Waldfogel study shows, the public does not substitute among the different media outlets for news. Indeed, even in the limited data relied upon by this study, the only evidence of any substitution for broadcast television news was through the Internet by people with higher incomes and education, and even this level of substitution was quite low.[33]

55. While the study by Nielsen Media Research, 2002 "Consumer Survey on Media Usage" (Study #8) appeared to contradict the findings in the Waldfogel study, the Nielsen study cannot be relied upon for policy because it simply reported what people thought they might do in the future, which, statistically, is not predictive of what people actually do.[34]

As Baker explains, the Waldfogel study on the actual news habits of consumers in Study #3 is a much more accurate and reliable guide for policy.[35]

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[32] Id. at 25, n. 22.
[33] See Baker report, pp. 9 – 12.
[34] See Baker report, pp. 12 – 15.
[35] Baker report, p. 14.

56. Second, these other media outlets are not independent "voices" to the extent that they are owned by the same companies that own the broadcast stations. A local cable news network or Internet site is not a different voice when in fact it is owned and its content is provided by the local newspaper or TV station. The top two cable system owners, AT&T and AOL Time Warner have over 27 million subscribers, accounting for 40 percent of all cable households. Two companies control the direct-broadcast satellite market. The five broadcasting networks also dominate cable programming (ABC, Viacom, AOL Time Warner, GE, and News Corp.)[36] Also, the majority of Internet sites that people may use for news are run in conjunction with a "bricks-and-mortar" news operation (i.e. a broadcast or cable property or a newspaper). The editorial content of a website is indistinguishable from the content available in the newspaper, magazine or broadcast station.

57. Third, as the Waldfogel study demonstrates, people tend to use the other outlets for news as complements, rather than substitutes, for news, which means that if one outlet, such as broadcast television, were no longer available, they would probably consume less news overall. Based on an earlier study conducted by Waldfogel, this could have adverse consequences on civic behavior such as voting. In the earlier Waldfogel study, it was found that college students who replaced the local newspaper with the New York Times did not vote in local elections.[37] Thus, there are demonstrated risks to the public welfare from the loss of news outlets.

58. It should also be noted that non-traditional news programs, such as magazine and talk shows should not be counted as a voice for news equal to traditional news because this programming is not produced for journalistic purposes. Instead, these programs are for the purpose of maximizing "synergy" with the broadcast owner's other business enterprises. During the first season of the CBS prime-time game show "Survivor", KCTV, the Kansas City Meredith-owned station which is a CBS affiliate, ran as its lead "news story" a feature about "Survivor"—

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[36] Dean Alger, *Megamedia*, Lanham, MD: Rowman & Littlefield Publishers, Inc.,1998, 91.

even though a story about the CBS network game show had no local tie. KCTV was not alone, however. Local CBS affiliates all around the country reported on the "Survivor" game show as a news story. This same station also ran pre-packaged features produced by "Better Homes and Gardens," a print publication owned by Meredith's magazine publishing operation. Meredith's efforts to achieve synergies between its publishing and broadcasting operations meant that these features—little more than advertisements for the company's print publications, took the place of local news.

59. In 1998, Viacom dismantled news operations at KSTW, one of its Seattle stations, saying that "there is more than enough news programming" in the market. Recently, Viacom announced that KSTW (a UPN affiliate) would begin airing newscasts produced by KIRO-TV, the CBS affiliate in Seattle. Although a separate company owns each station, the affiliated stations' networks are commonly owned. Rather than resume providing its own newscast that would compete with other news in the market, Viacom has determined to maximize its profit margin by re-broadcasting content that is already available on Seattle airwaves.[38]

60. Indeed, the rising prevalence of this type of programming in the place of traditional news reporting has alarmed news professionals in recent years. In April of 2002, Orville Schell, the dean of the Graduate School of Journalism at the University of California at Berkeley, wrote an editorial in the San Francisco Chronicle decrying the effect that media consolidation has had on the quality of national and local news coverage on broadcast television. Schell reported that the problem was so serious that the heads of the nine major journalism schools in the nation had begun holding meetings to discuss how to combat it.[39]

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[37] Baker report, p.12; Waldfogel, p.10.

[38] John Levesque, "Brought to you by KIRO, news on KSTW", Seattle Post-Intelligencer, Tuesday December 31, 2002 (http://seattlepi.nwsource.com/tv/102107_kstw31.shtml).

[39] San Francisco Chronicle, Orville Schell, April 28, 2002, "Networking the Public Interest. The medium is the mess: What to do about broadcast news?"

61. The current ownership rules ensure, to a degree, the continued existence of independent local television news operations. The Commission should not change the rules so as to threaten this vital public resource so critical to our democratic structure.

V. THE COMMISSION SHOULD RETAIN THE REMAINING LOCAL RADIO OWNERSHIP LIMITS BECAUSE THE ACCELERATED PACE OF DEREGULATION IN THE RADIO INDUSTRY TO DATE HAS DIMINISHED THE DIVERSITY OF MUSIC AVAILABLE IN LOCAL MARKETS, DAMAGED THE QUALITY OF RADIO PROGRAMMING NATIONWIDE AND CREATED A MARKET BURDENED BY ANTI-COMPETITIVE PRACTICES.

A. Consolidation in Radio Has Resulted in a Lack of Diversity in Music Programming Nationwide.

62. It is undisputed that the elimination of the national radio ownership cap and the loosening of the local radio station ownership limits have resulted in massive consolidation of radio properties nationwide, and a concurrent slowing in the rate of growth of stations in local markets. In the Roberts study, Study #1, the authors showed that while there was a high rate in growth of radio stations beginning in 1960, this rate of growth slowed substantially since the deregulatory actions in 1996. Indeed, the rate of growth in stations in one of the markets reviewed, Kansas City, experienced no growth at all after 1980.[40]

63. Similarly, the Williams and Roberts study, Study # 11 also showed a sharp increase in ownership concentration during the period after 1996, with a sharp drop in the rate of growth in the number of radio outlets during the same period.[41]

64. Recent studies also demonstrate that this massive consolidation in the radio industry over the past six years has resulted in a sharp <u>decrease</u> in the diversity of music available in local communities, to the detriment of the radio and sound recordings industries. On 11/15/02, the Future of Music Coalition (FMC) released a study that tacked the actual songs played by stations

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[40] Roberts, et al., pp. 2-3; Baker report, p. 15.
[41] <u>See</u> Baker report, pp. 17 – 18.

nationwide. The data from this study reveals that, there was considerable format homogeneity - playlist overlap between supposedly distinct formats [by] as much as 76%."[42]

65. Further, the FMC study also reported significant listener dissatisfaction with the content on radio. In its survey of 500 listeners nationwide, the FMC found that 80% of listeners wanted less repetition in songs, longer playlists and supported efforts to media consolidation.[43] Over 67% of these respondents supported Congressional action to address the new "payola" systems whereby radio conglomerates pay fees to mid-level "promoters" (often owned and/or controlled by the conglomerates) to control the music played by local stations.

66. The data collected in the Williams and Roberts study (Study #11) was not inconsistent with the FMC report. The Williams and Roberts study reported that, the increase in ownership concentration had resulted in a <u>decrease</u> in the diversity of formats nationwide. In his critique of the study, Dean Baker found the "statistically significant reduction in the diversity of songs" "<u>striking</u>" since the methodology used would have been expected to result in a bias <u>against</u> any finding of a drop in diversity. Baker explains that the methodology used in the study was likely to yield numbers showing no effect on diversity because only the "top ten play lists" of stations were measured. Accordingly, stations that only played top ten play lists were counted as the same as stations that played hundreds of songs other than those in the top ten play lists.[44]

67. Further, the findings in the Williams and Roberts study are not inconsistent with the FMC study because while the Williams and Roberts study purported to show that the diversity of songs had increased in local markets, this finding was not based on the actual number of songs played on local stations, as was the FMC study. Instead, Williams and Roberts simply reported

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[42] Peter DiCola and Kristin Thompson, "Radio Deregulation: Has it Served Citizens and Musicians?", November 18, 2002, p. 57 (http://www.futureofmusic.org/images/FMCradiostudy.pdf),
[43] *Id., pp. 68-90*
[44] Baker report, p. 18

format names, without regard to the actual songs played.[45] Baker also critiques the conclusions asserted by Williams and Roberts from the data collected because there was no attempt made to evaluate the level of music diversity over time. For example, a longitudinal study could have shown the changes in music diversity played on the radio since the 1996 Act.[46]

68. Finally, consistent with the FMC's finding of listener dissatisfaction, Williams and Roberts also documented a decline of almost 1% annually in overall radio listenership nationwide.[47] While Williams and Roberts did not link this drop in the number of listeners to listener dissatisfaction, such a correlation would be consistent with the predictions set forth in the Cunningham and Alexander study.[48]

B. Communities Have Lost Access to Local Talent.

69. One radio executive has estimated that over 10,000 radio industry jobs have been lost since the passage of the 1996 Telecommunications Act,[49] including those of local on-air talent. One of the ways that media conglomerates have been able to eliminate local talent is through the use of "voice-tracking," a practice that has been trumpeted as the business plan of the deregulated future by Clear Channel, which in the last six years, has grown to be the largest group owner of radio stations in the United States, dominating the audiences and advertising revenues in all the major markets.

70. What voice-tracking entails is the recording of entire air shifts in remote locations, splicing in music, and airing those shifts as though they were live and local broadcasts. Clear Channel records calls to radio stations, including dedications of songs, and airs those recorded calls in other markets on other stations, without identifying that the calls are not local. So, when a

[45] Id.
[46] Baker report, p. 19.
[47] Williams and Roberts, p. 19.
[48] See Baker report, p. 18.
[49] See Salon.com, "One Big Happy Channel?" Eric Boelert, 6/28/01, www.archive.salon.com/tech/feature/2001/06/28/telecom_dereg/index.html

listener to a Clear Channel station in Washington, D.C. requests that a song be played for her husband on their anniversary, that dedication is broadcast in Detroit, or another market far away. In many instances, announcers voice-tracking a station from outside a market are given "cheat-sheets" of information on the locale of the voice-tracked station so that he/she seems to know the community when in fact the announcer may be hundreds of miles away. These practices deprive local communities of local talent and access to an important media outlet and are a disservice to the public.

71. On a related note, the unions representing broadcast talent in smaller markets also report that even local advertising production has been lost because as stations are bought by companies headquartered in New York and Los Angeles, the advertising work for local stations gets taken out the hands of local advertising facilities and produced outside of the local markets.

C. Consolidation Has Resulted in the Surge of Complaints Of Monopolistic and Anti-Competitive Business Practices.

72. Clear Channel, the company that has been most aggressive in buying up radio properties, has been the subject of a number of lawsuits and regulatory and Congressional inquiries for business practices that have been made possible by its massive concentration and vertical and horizontal integration in the radio, concert promotion and music performance industries. Clear Channel has been sued upon claims of monopolistic and anti-competitive practices in several cities, including Denver and Cincinnati. Clear Channel has been accused of threatening musical artists and record labels with the blacklisting of their music for refusing to play at Clear Channel owned music venues upon terms dictated by Clear Channel or refusing to buy advertising spots on Clear Channel owned stations. Clear Channel has also been sued by Spanish Broadcasting for alleged anti-trust violations. Further, the Commission and the Department of Justice have received numerous complaints of anti-competitive practices by this industry leader. Finally, in 2002, Senator Russ Feingold and other Congressional representatives

sponsored the "Competition in Radio and Concert Industries Act," which specifically addressed the anti-competitive business practices that have been engendered by the massive media consolidation that has followed the deregulation of the radio industry this far.

73. The ownership rules have historically guarded against the harms that have been raised not only by consumer groups, but also by advertisers, record labels, concert promoters and competing radio conglomerates. Further slackening of the regulatory controls in the radio industry at this point in time would violate the Commission's duty and mandate to protect the public interest.

VI. THE COMMISSION SHOULD RETAIN THE NEWSPAPER/BROADCAST CROSS OWNERSHIP RULE

A. The Newspaper-Broadcast Cross-Ownership Rule Is Still Necessary To Protect Diversity And Competition Because They Continue to be the Primary Sources for News and Information to Local Communities.

74. As the Supreme Court noted in its 1978 decision upholding the newspaper/broadcast cross-ownership rule: "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[50] These words are as true today as they were in 1978 because, notwithstanding changes in the media marketplace, newspapers and broadcast television remain the most important sources for news and information for the public.

75. Newspapers and television newscasts serve a unique role for the American public. Newspapers provide in-depth reporting and analysis and they are the only media whose primary focus is news, not entertainment. Television dominates in political news and political advertising, provides breaking news, and conveys the immediacy and emotional impact of its visual images. As was true fifty years ago, most Americans still get their local news and information from their daily newspaper and one of a handful of broadcast television stations. As Waldfogel reports in his

Commission sponsored study (Study # 3), these outlets continue to be the most important source of news for the American people, with more than 60 percent of Americans relying on network and local television for their news and 62 percent of Americans reading a daily newspaper.[51]

76. No other medium compares in audience reach or advertising dollars. Cable news shows are limited to the top 25 markets and, where available, reach no more than two percent of the audience.[52] The Internet is primarily a distribution mechanism for content from non-local news sources, or content provided by the local newspaper or local television station.[53] Moreover, since only half the population has an Internet connection at home, the Internet as a news outlet is not available to half of all Americans, and fewer for low-income people earning less than $15,000 a year (25 percent), non-college educated (12.8 percent), Blacks (39.8 percent), and Hispanics (31.6 percent).[54]

77. Although, as previously noted, much of the data contained in the Nielsen study was of very limited value as it solicited what respondents thought that they might do in the future, the study did contain some very important data on the public's actual and current media usage. The Nielsen demonstrates how important newspapers and broadcast television are to the general public.

78. In the Nielsen study, 84.8 percent of respondents identified television and 62.8 percent identified newspaper as a source for news and information in the past seven days.[55] No other media outlet comes close to this penetration level for local news and information. Further, where

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[50] FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 777-79 (1978).
[51] Waldfogel, Tables II3 (television news) and I1 (newspaper). This data is based on survey data collected by Scarborough Research, 1999-2000 on media usage of 180,000 respondents in 66 large markets.
[52] Gomery report, p. 5.
[53] Gomery report, pp. 6-8.
[54] U.S. Department of Commerce, National Telecommunications and Information Administration, *A National Online: How Americans are Expanding Their Use of the Internet*, Feb. 2002, Table 2-2, pp.26-27. The report is based on Sept. 2001 Census Bureau Current Population Survey data (available at (http://www.ntia.doc.gov/ntiahome/dn/anationonline2.pdf).
[55] Nielsen, Table 001.

consumers identified the Internet as their source of news, the sites mentioned were national rather than local in scope and perspective. Similarly, where consumers cited cable television as their source of news, the channels most frequently noted provided only national, not local news (i.e., CNN (57 percent), Fox (27.1 percent), MSNBC (16.5 percent), CNBC (5.1 percent), Headline News (5.9 percent), and local cable news channel (10.8 percent). [56]

79. In sum, the evidence demonstrates that television and newspapers dominate in the local news and information market despite the growth of cable and the Internet. The fact that half of all Americans, and significantly larger percentages among certain demographic groups, do not have Internet connections at home underscores the continuing importance of the two mass media, television and newspaper, for the dissemination of local news and information.

B. Permitting the Common Ownership of Newspapers and Television Stations in a Local Market Would Reduce Viewpoint Diversity.

80. Preserving the prohibition against the common ownership of newspapers and television stations in local markets is critical for maintaining diversity in the delivery of local news and programming to the public not only because of the uniquely important role these media outlets play in the delivery of news to the public as discussed above, but also because (i) there are already few voices in local markets for these outlets; (ii) the public does not receive diverse viewpoints through other media; (iii) media conglomerates will combine news operations to save costs; and (iv) media conglomerates will impose homogenous editorial views on these critical news voices.

81. The available empirical data shows that citizens in most local communities already have very limited access to newspapers and broadcast television stations in local markets. Most

[56] The Nielsen data is somewhat contradictory on local cable news viewership. While 58 percent say that have watched cable or satellite news channels for local news and current affairs (Table 008), a later question reveals that in fact only about one-third view local cable channels. When cable news viewers were asked to identify which cable channels they watch for news and current affairs (Table 018), only 27.1 percent identify the Fox News Channel (which we presume is largely local cable news programming) and only 10.8 percent identify a local cable news channel among their sources. The other two-thirds appear to tune in to national cable news (CNN, CNBC, MSNBC,

Americans have access to only one or two daily newspapers.[57] Similarly, most Americans have access to only three or four broadcast television newscasts.[58]

82. Also, as the Waldfogel Study # 3 powerfully demonstrates, there is no consumer substitution between broadcast television and newspapers and no statistically significant substitution between these critically and uniquely important media and anything else.[59] Thus, there is a very real danger inherent in encouraging even fewer voices by permitting the co-ownership of newspapers and television. As Ben Bagdikian notes:

> It is a favorite axiom of large media operators that, while they have great power, if they abuse it the public will reject them. But in order to have the power of rejection, the public needs real choices and choice is inoperative where there is monopoly, which is the case in 98 percent of the daily newspaper business, or market dominance of the few, which is the case with television and most other mass media.[60]

83. Further, the co-ownership of a local newspaper and broadcast station puts diversity at risk because of the well documented tendencies of media conglomerates to reduce costs and promote "synergies" by the combining of news staff and resources at the expense of diversity of viewpoint. As discussed *infra*, we have already seen the emergence of this trend, not only with media owners of television, radio and Internet properties, but also with owners of newspaper chains, such as the Tribune Company and Media General.

84. Finally, diversity is threatened by the risk that media conglomerates will impose the same editorial viewpoint on these critical sources of local news and information. Due to the importance of newspapers and broadcast television, it was quite correct for the Commission to seek data on the potential effect of co-ownership on the independence of newspapers and

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and others). Nielsen, Table 001 (radio, Internet), Table 008 (cable), Table 018 (cable channels) and Table 019 (Internet web sites).

[57] CU Comments, NBCO; p. 122..

[58] *Notice of Proposed Rulemaking,* In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235; and Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197. September 20, 2001 (Rel.) ("Cross-Ownership *NPRM*"); Cooper 2002, 120.

[59] Baker report, 10.

television stations. However, the study sponsored by the Commission, D. Pritchard, "Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign," (Study # 2), which purported to show that co-ownership does not affect the editorial views of co-owned newspapers and televisions, is deeply flawed, and when certain of the data is corrected for error, actually demonstrates that a majority of the combinations studied did carry a similar news slant.[61]

85. In Pritchard (2002; study #2), the researchers reviewed the coverage of the 2000 election by ten co-owned newspapers and television stations to test whether cross-ownership is likely to lead to homogenization of viewpoints. The study reported that of the 10 combinations reviewed, 5 had a common slant and 5 had different slants. As Baker explains in his report, Pritchard's study is flawed because it does not compare the election coverage of combined operations with the coverage of a reference group of independent newspapers and television that are not part of combinations. Id. It is possible that news events may objectively have lead one candidate or the other to be portrayed in a negative or positive manner. Therefore, in order to determine bias, as opposed to slant, Pritchard should have compared the difference in slant between the cross-owned outlets with a reference group of newspapers and television stations that were not commonly owned.[62]

86. A second design problem stems from the news issue examined. Baker notes that despite Pritchard's view that a generally close presidential race was a useful issue to examine, the "presidential race is actually not an especially likely place for the owner of a news outlet to exert heavy handed control, especially one as close as the 2000 race [because] the outlet owners had to be largely reconciled to the possibility that their favored candidate might lose. The owners of the

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[60] Ben Bagdikian, *The Media Monopoly,* Boston: Beacon Press, 6th Edition, 2000 p. 8-9.
[61] Baker report, pp. 5 - 7.
[62] Baker report, 6.

outlets had to be prepared to operate profitably regardless of which candidate won the election. Heavy handed coverage on behalf of the losing candidate would not obviously advance this goal."[63]

87. Moreover, even though Pritchard states that he selected the 2000 presidential race because the race was close and the media combinations would have "reasonably hoped" to have been able to influence the outcome, he in fact chose to review media combinations located in states where the race was not close at all. As Baker points out, 7 of the 10 combinations reviewed by Pritchard were located in states where the winner had a margin of more than 10 percentage points.[64]

88. Further, Pritchard's conclusion was based on a faulty review of his own limited data. On reviewing Pritchard's data, Dr. Baker found that two of the television stations reported as having a "Gore slant" actually slanted more towards Bush. Thus, Pritchard's limited data actually showed that 7 of the 10 media combinations had a common slant.[65]

89. Finally, and perhaps most significant, the actions of media companies currently permitted to co-own newspaper and television properties should not be viewed as particularly instructive of what media companies could do in a deregulated environment, as they may feel somewhat constrained since they are operating in a context where the Commission has granted them special exemptions to a general rule. More reliable evidence is that which has been collected with respect to the current practices of media conglomerates in controlling the content and views of their media properties, as previously discussed, see above, pp. ___ and below.

90. There is a readily apparent danger when media conglomerates seek to control journalistic content. This danger is perhaps best illustrated by what recently occurred in Canada

[63] Baker report, p. 6.
[64] Baker report, p. 7.
[65] Baker report, p. 6.

when CanWest Global Communications Corp. ("Can West") was permitted to acquire monopolistic control over Canadian media. CanWest owns Canada's second largest commercial broadcast chain (Global Television Network) and also controls at least 30 percent of the nation's daily newspaper circulation.

91. Following the approval of its television broadcast license, Can West issued a mandate that its 14 largest daily newspapers would publish the same weekly editorial which would be written at its corporate headquarters, with a prohibition on any contradictory local editorials.[66] In response to this edict, a number of its newspaper journalists held a two-day byline withdrawal in opposition, several columnists resigned, and more than 175 articles were published across Canada and elsewhere analyzing and denouncing the move. In one of these articles, reporters lamented that: "The company is narrowing debate and corrupting both news coverage and commentary to suit corporate interests. A free press is no longer free when competing voices disappear."[67]

92. CanWest responded to the criticism by censoring critical reports that appeared in certain of its newspapers, and in June 2002, firing Russell Mills, the publisher of the *Ottawa Citizen*, who persisted in publishing editorials that did not follow the CanWest editorial policy. This policy is still currently in effect and the government has no power to control it.[68]

93. The newspaper/broadcast cross-ownership restriction is a critical regulatory tool that protects against the domination of American media by any single corporate interest.

VII. <u>THE COMMISSION SHOULD RETAIN THE DUAL NETWORK RULE</u>

94. The dual network rule should be retained to protect against the erosion of local news

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[66] DeNeen L. Brown, "Canadian Publisher Raises Hackles: Family is Accused of Trying to Restrict Local Newspapers' Autonomy", *Washington Post,* Jan. 27, 2002, A25. *See* also Canadian Journalists for Free Expression, "Not in the Newsroom! CanWest Global, Chain Editorials and Freedom of Expression in Canada," April 2002 ("Not in the Newsroom!") (available at http://www.cjfe.org/specials/canwest/canwintro.html); Statement of Stephen Kimber, Reply Comments of Consumers Union et al in *Newspaper/Broadcast Cross-Ownership,* Feb. 15, 2002.

[67] <u>See</u> Open Letter from Montreal Gazette employees, Dec. 10, 2001"Not in the Newsroom!" www.cife.org/special/canwintro.htm

and to revitalize and encourage innovation in entertainment programming. History tells us of another danger that may lurk if the Dual Network Rule is eliminated. During the Civil Rights movement, Birmingham, Alabama, like many other cities, was dominated by a single media voice (the *Birmingham News*, the largest and most powerful newspaper in Alabama also owned the city's dominant TV station). As civil unrest was filling the streets of Birmingham, the local media was showing "pictures of people shaking hands and growing flowers."[69] Even as *the New York Times* was detailing the fear and terror in Birmingham, the city and the local media were denying such events.[70] Only when the national networks began televising "images of firehoses and police dogs, the local media could ignore it no longer."[71] According to Spider Martin, a Birmingham News photographer at the time, Rev. Martin Luther King, Jr. credited the national media for advancing the civil rights movement by showing "the world what it was really like."[72] The FCC must not permit history to repeat itself.

A. The Weakening of the Dual Network Rule Has Diminished Diversity in News Programming.

95. The weakening of the dual network rule has permitting consolidation of network news and entertainment program, as exemplified by NBC and Paxson, NBC and Telemundo and Viacom (CBS) and UPN. Under the existing network duopolies, independent news operations have been shut down in many cases. In other cases, independent sources of news have been shelled and replaced with re-purposed product. Further relaxation of the rules will only serve to quell new voices or diverse viewpoints, as emerging independent networks are quashed in favor of more "cost effective" means of delivering content.

96. For example, in Philadelphia, where Viacom owns television stations KYW-TV (CBS)

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[68] See The Newspaper Guild/CWA, Dec. 17, 2002, Interview with Jan Ravensbergen.
[69] Recent History Teaches a Lesson About the Media, Brooks Boliek, Hollywood Reporter, July 9, 2002, *quoting* Spider Martin, a Birmingham News photographer at the time.
[70] *See* Recent History Teaches a Lesson About the Media, Brooks Boliek, Hollywood Reporter, July 9, 2002.

and WPSG-TV (UPN) and all news radio station KYW-AM, Viacom is assigning KYW-AM anchors to produce news for its UPN television station rather than maintain a separate news operation for that station. Therefore, where there once existed a potential for another viewpoint to emerge in this market via the UPN station, we now see news simply "re-purposed" from radio to suit television.

97. Similarly, in Detroit, the Viacom/CBS owned and operated station (WWJ-TV) shared newscasts with the UPN station in that market (WKBD-TV). Viacom owns both CBS and UPN. When CBS determined that its local newscasts were not profitable, it left the local news business altogether. Scripps-owned WXYZ will produce newscasts for the UPN station at 10 p.m., and there will be one fewer newscast at 11 p.m. in the Detroit market.

98. Another relates to NBC and Telemundo. Before NBC acquired Telemundo, NBC owned-and-operated stations and Telemundo owned-and-operated stations produced independent newscasts in different languages. Since the acquisition of Telemundo, NBC has combined its NBC and Telemundo operations Miami, and announced plans to implement similar consolidations in markets like Los Angeles and Chicago. NBC's and Telemundo journalists will work side-by-side, from the same assignment desk, sharing news footage and technical crews and in the same newsroom under the same newsroom management. Prior to NBC's acquisition of Telemundo, the bilingual community in Miami had access to two separate newscasts with divergent editorial perspectives and each with a different focus. Now, bilingual audiences in markets with burgeoning Spanish-speaking populations like Los Angeles, Dallas, Miami and Chicago will be treated to the same content, in two different languages, on two different channels.

99. Further, while the expectation for combined networks was that one network would market to the mainstream audience and the second network would be free to cater to niche or

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[71] *Id.*

minority communities, Notice, ¶¶158, 160, this result has not materialized. The BET network, now owned by Viacom, just announced the cancellation of several news related and public affairs shows, including "BET Tonight With Ed Gordon" and "Lead Story" and "Teen Summit," a youth-oriented public-affairs program. It was just announced that about 40 jobs would be eliminated, constituting 12% of BET's work force. [73]

100. Finally, NBC owned and operated stations and NBC affiliates across the country have in the last few years begun the process of merging station operations with Paxson Television affiliates. While the company owns less than fifty percent of Paxson Television, NBC has sought to combine the local programming, sales and technical control operations of the NBC and PAX stations. In most instances, NBC has not contributed original programming, news or entertainment, to the PAX affiliate but instead rebroadcasts its NBC news product on the PAX station. Therefore, markets in which this relationship exists have seen another emerging network's potential for diversity of viewpoint bow to re-purposed news product and, in some cases, original news product produced by a major network station or affiliate.

B. The Loss of Independent Producers Resulting from the Vertical Integration of the Broadcast Networks Has Resulted In Less Diversity and Innovation in Entertainment Programming.

101. Since the elimination of the Financial Interest and Syndication Rules (and other limits on network control over program production) the number of independent producers has plummeted, with networks owning and utilizing their own "in-house" production facilities for the production of a wide range of television programming. This consolidation of production is reflected in the data collected in the FCC study conducted by Mara Einstein, "Program Diversity and the Program Selection Process on Broadcast Network Television," (Study #5). What is disputed is the effect of this dramatic shift in the television production market on the diversity of

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[72] *Id.*

programming now being offered to the public.

102. Basing her conclusions on the number of different program "genres" offered on broadcast television from 1960's through 2002, i.e., Einstein concludes that the elimination of the Fin/Syn and other regulatory controls over production resulted in greater "diversity" of programming. However, the "diversity" of programming with which the Commission has long been interested in promoting is far more complex than ensuring that the public has access to game shows as well as episodic comedies and dramas. The problem with the conclusions of this study is that program genres are <u>meaningless</u> as a measure of "viewpoint" diversity, which has been long recognized as the "touchstone" of Commission policy.

103. Television programming holds a distinct and vital place in reflecting and nurturing American culture and democracy. Fifteen years ago, there were over twenty different independent producers shopping programs to the competing networks. Now, the media conglomerates that own the networks also own their own production facilities, and there are only 3 or 4 major independent television producers left. As a result, the networks will distribute the programming produced by their own subsidiaries, even if inferior in quality to other available product. There is simply no incentive for innovative programming.

104. For example, the television program, "All in the Family" was rejected by certain networks as too provocative, but was eventually picked up by the CBS network and became television history, both entertaining and challenging the American public. There is little chance of the emergence of an "All in the Family" program today. Today, the networks produce their own programs internally and distribute these for the cost value even where such programs may not be of the same quality as other programs. Ownership consolidation of television stations, both horizontally and vertically across the industry has not only damaged the quality of news

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[73] Tom Jacobs, "Trent, Ed and OJ", *TV Barn,* December 18, 2002 (http://www.tvbarn.com/archives/007595.html).

programming as discussed *infra*, but has also stifled innovation and diversity in entertainment television, another critically important forum for nurturing and promoting American culture and democracy.

105. It should be noted that Einstein also explicitly found that cost was the driving factor for the type of programming shown and that appeals to advertisers were now also a major factor in television production.[74] Indeed, Einstein shows that the "quantity of public affairs and children's programming" has declined as a result of being less profitable programming options.[75] The Commission must take seriously this growing power and influence of advertising over the American media.

106. In sum, the data available is alarming, and the Commission should not take any further steps in permitting even greater ownership consolidation.

VIII. THE COMMISSION SHOULD RETAIN THE CURRENT NATIONAL TELEVISION OWNERSHIP CAP.

107. The extent to which an individual or entity should be allowed to own multiple broadcasting properties has been a major concern dating back to the very beginning of Federal regulation of the broadcasting industry. In testimony at a 1924 congressional hearing on adoption of Federal radio legislation, Secretary of Commerce Herbert Hoover noted the danger in "allowing any single person or group to place themselves in [a] position where they can censor the material which shall be broadcast to the public."[76] In addition, in enacting early radio legislation, Members of Congress expressed similar concerns over the potential for monopolization of the broadcasting industry by large corporations holding patents to equipment necessary to transmit and receive

[74] Einstein, pp. 10-14
[75] Einstein, p. 11

[76] *See, To Regulate Radio Communication: Hearings on H.R. 7357 Before the Committee on the Merchant Marines and Fisheries,* 68th Cong., 1st Sess. (1924).

radio communications.[77] As a result, Congress included in the Communications Act of 1934, a licensing scheme designed, in part, to prevent such monopolization and to promote diversification in the ownership of broadcast licenses.

108. The Communications Act did not include any express limitations on the number of broadcast licenses that could be held by a single entity. However, since its original enactment, the Federal Communications Commission (FCC) has consistently construed the statute as authorizing structural regulation to increase competition and viewpoint diversity among broadcast licensees. In 1941, the FCC promulgated regulations to limit the influence of the national broadcasting networks over local affiliates and to prevent future concentration of the broadcasting industry in the existing networks. Under the "Chain Broadcasting" rules, the FCC prohibited network and territorial "exclusivity" arrangements between networks and affiliates; limited the term of affiliation agreements to two years; and prohibited provisions within affiliation agreements which limited the affiliate's discretion to reject network programming considered "unsatisfactory or unsuitable." In addition, the rules placed limitations on the number of stations that could be acquired by a network in the same market, restricted network acquisition of stations in smaller markets where network ownership would restrain competition, and prohibited a single entity from owning more than one network organization. While initially adopted to curtail potential abusive practices by the national radio networks, the rules were made applicable to television networks in 1946.[78]

109. In addition to its concern with the potentially anticompetitive practices of the national networks, the FCC also perceived possible impediments to competition and diversity in national concentrations of ownership by any entity. As a result, in 1940, the Commission issued multiple ownership restrictions governing the newly emerging FM radio service, which limited the number

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[77] *See,* H. Rep. No. 464, 69th Cong., 1st Sess. (1926).

of stations that could be held under common control to six.[79] A year later, the FCC adopted a national ownership limit for television stations of three, as part of a rulemaking proceeding that established television broadcasting as a commercial service.[80] In 1944, the three-station television limit was increased to five in response to a petition by the National Broadcasting Company.[81] In 1946, the FCC, for the first time, established a de facto ownership limit of seven stations for the AM radio service when it denied a Columbia Broadcasting System (CBS) application for an eighth station.[82]

110. The FCC promulgated the "seven station" rule in 1953, formally adopting a seven-station limitation for the AM service and increasing the limitation on FM stations to seven. The FCC retained the five station limitation for television until 1954, when it modified the rules to allow ownership of up to seven television stations, no more than five of which could be in the VHF band.[83]

111. The FCC further relaxed its national ownership caps in 1985 based on findings that the perceived threat to competition and diversity from national ownership concentrations had dissipated substantially, due to the dramatic increase in operational broadcast stations and alternative programming sources since original adoption of the rules.[84] In addition, the Commission found that the numerical caps arbitrarily failed to distinguish between the size of the various broadcasting markets across the country in determining the potential for harmful concentration. Moreover, the "seven-station" rule, according to the FCC, possibly "limit[ed] the diversification of program and service viewpoints that it was intended to advance," in that it

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78 *See, Amendment of Part 3 of the Commission's Rules,* 11 Fed. Reg. 33 (January 1, 1946).
79 *See, Rules Governing High Frequency Broadcast Stations,* 5 Fed. Reg. 2882 (1940).
80 *See, Broadcast Services Other Than Standard Broadcast,* 6 Fed. Reg. 2282 (1941).
81 *See, Rules Governing Broadcast Services Other Than Standard Broadcast,* 9 Fed. Reg. 5442 (1944).
82 *In re Sherwood B. Branton,* 11 FCC 407 (1946).
83 *Amendment of Section 3.636 of the Commission's Rules and Regulations Relating to Multiple Ownership of Television Broadcast Stations,* 43 FCC 2797 (1954).

"preclud[ed] the possibility of realizing the benefits inherent in program production or acquisition for large audiences."[85]

112. Based on these findings, the FCC modified the rules to allow common ownership of up to 12 broadcast stations and a maximum national audience reach of up to 25 percent. In addition, to foster increased minority ownership of broadcast properties, the new rule allowed group owners to own at least two additional stations and reach an additional five percent of the audience if such stations were minority controlled. Congress altered these rules through passage of the Telecommunications Act of 1996.[86] The 1996 Act directed the FCC to eliminate the cap upon the number of television stations any one entity may own and to increase to 35 from 25 the maximum percentage of American households a single TV broadcaster may reach.[87]

112. Currently, the national television multiple ownership rule (the "national TV ownership rule") prohibits any entity from controlling television stations where the combined audience reach exceeds 35% of the television households in the United States.[88] In *Fox Television Stations, Inc. v. FCC,* 280 F.3d 1027, the United States Court of Appeals for the District of Columbia Circuit heard a challenge to the national TV ownership rule. The Court of Appeals remanded for further consideration the issue of whether to repeal or modify the national TV ownership rule, holding that "the probability that the Commission will be able to justify retaining the Rule is sufficiently high that vacatur of the Rule is not appropriate."[89] In response to that court decision and other related elements, the FCC created the Media Ownership Working Group to

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[84] *See, Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations,* 100 FCC 2d 74 (Memorandum Order and Opinion) (1985).
[85] *Id.* The FCC also noted that the limitation could inhibit the future development of a new broadcasting network, by precluding ownership of a sufficient number of stations to generate a base for quality program production.
[86] P.L. 104-104.
[87] *Id.* at sec. 202(c)(1).
[88] 47 C.F.R. sec. 73.3555(e).
[89] *Fox Television Stations, Inc. v. FCC,* 280 F.3d 1027, 1049 (2001).

study the media marketplace for the express purpose of broadening the FCC's understanding of this industry.

113. Shortly thereafter, the Working Group commissioned a series of studies by internal and external authorities to gather data in an effort to better understand market and consumer issues so that the FCC could develop public policy. On October 1, 2002, more than 10 months after commissioning the studies and less than three weeks after announcing a Notice of Proposed Rulemaking (NPRM), the FCC released 12 empirical studies in an effort to help it determine whether to eliminate or modify the six media ownership rules, which are the subject of this NPRM. Unfortunately, none of those studies directly addresses the national TV ownership rule. Ideally, the Writers Guild of America, East and AFTRA would have commissioned their own study to specifically address this rule. However, the extremely short reply period (30 days, which was later extended another 30 days, but ran through Thanksgiving, Christmas and New Years Day) provided by the FCC made it impossible to seek out and hire professionals capable of conducting a proper study, interpreting the results and producing a final report. Instead, they were required, out of necessity, to examine the 12 studies commissioned by the FCC and extrapolate any results that may have relevance to the national TV ownership rule.

114. The Writers Guild of America, East and AFTRA determined that the most appropriate method of determining whether the national TV ownership rule is necessary to safeguard competition or to advance diversity is to examine the result of the elimination of the national radio ownership cap.[90] Only two studies provide information that can be used for this purpose. Study #9, *Radio Market Structure and Music Diversity,* by Williams, Brown & Alexander, cannot be relied upon given the authors' statement that "our results are tentative, and

[90] On March 7, 1996, the FCC implemented provisions of the 1996 Telecom Act that eliminated the national multiple radio ownership rule and relaxed the local ownership rule.

we can make no definitive statement regarding the relationship between concentration and diversity."[91]

A. Existing Concentration of Media Ownership Requires Retention of the Television Ownership Cap.

115. In *A Comparison of Media Outlets and Owners for Ten Selected Markets* (1960, 1980, 2000) (Study # 1), Roberts, Frenette and Stearns compared the availability and ownership of media in ten different radio markets at three different points in time (1960, 1980, 2000). The authors found that "from 1980 to 2000, the count of owners was generally, relatively stagnant."[92] They attribute this result to "tremendous consolidation, especially in the radio industry,[93] since passage of the 1996 Telecom Act."[94]

116. In his report, Dean Baker found that the data in the study presents "a considerably more complicated picture" than described therein.[95] The Baker Report establishes that "the rate of increase in the number of outlets slowed substantially in nine of the ten markets in the period from 1980 to 2000. The rate of increase in the number of owners slowed in all ten markets, with one market actually showing no increase in owners in the second twenty-year period."[96]

117. Baker created the following table, from the data provided in the study, to show the rate of increase in the number of media outlets and owners for each of the ten markets examined:

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[91] *Radio Market Structure and Music Diversity,* Williams, Brown & Alexander at 2 (September 2002).
[92] *A Comparison of Media Outlets and Owners For Ten Selected Markets (1960, 1980, 2000),* Roberts, Frenette and Stearns at 1 (September 2002).
[93] *Id.; See also,* FCC, Mass Media Bureau, *Radio Industry Review 2002: Trends in Ownership, Format and Finance,* September 2002.
[94] *Id.*
[95] *Id.*
[96] *Id.*

Table 1
Growth Rate in Outlets and Owners in Ten Selected Media Outlets

	Media Outlets		Owners	
	1960-1980	**1980-2000**	**1960-1980**	**1980-2000**
Altoona	72.7%	21.1%	33.3%	25.0%
Birmingham	57.1	34.1	70.0	11.8
Burlington	146.7	43.2	115.4	21.4
Charlottesville	62.5	76.9	100.0	40.0
Kansas City	100.0	20.5	106.3	0.0
Lancaster	50.0	19.0	60.0	25.0
Little Rock	105.9	71.4	114.3	10.0
Myrtle Beach	266.7	43.2	115.4	43.8
New York	73.0	19.5	93.3	-1.7
Terre Haute	116.7	26.9	137.5	15.8

Source: Roberts et al., 2002, Table 1.

As set forth in the table above, "the rate of growth in the number of outlets slowed in all of the markets examined in the period from 1980 to 2000, with the exception of Charlottesville. The rate of growth in the number of owners slowed in every market in the last twenty years. One of the markets, Kansas City, experienced no growth at all in the number of owners over the last two decades, and New York actually experienced a small decline."[97] Unfortunately, the study did not analyze the rate of growth from 1996 to the present. Such an analysis would have provided the FCC with data indicating the effect of the 1996 Telecom Act on growth. The drastic change in the rate of growth from the prior twenty-year period suggests that an influence that did not exist in that period had a substantial effect on continued growth. It stands to reason that the Telecom Act of 1996 had the single most effect on the rate of growth during the latter twenty-year period.

118. In his next table, The Baker Report shows the number of outlets and owners actually present in each market in 2000, and the number that would have been present, if the growth rate from the 1960 to 1980 period had been maintained for the period 1980-2000. (i.e. The first column in the "media outlets" section shows the actual number of outlets in each market in the year 2000;

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[97] *Id.*

the second column in the section shows the number that would have been present in the market if the 1960-80 growth rate had been maintained for two more decades.).

Table 2
Numbers of Media Owners and Outlets in 2000

	Media Outlets		Owners	
	2000 Actual	**2000 (60-80 growth)**	**2000 Actual**	**2000 (60-80 growth)**
Altoona	23	33	15	16
Birmingham	44	69	38	58
Burlington	53	84	34	60
Charlottesville	23	21	14	20
Kansas City	53	88	33	68
Lancaster	25	32	20	32
Little Rock	60	72	33	64
Myrtle Beach	38	81	23	43
New York	184	266	114	224
Terre Haute	33	56	22	45

Source: Roberts et al., 2002, Table 1.

The data clearly illustrates that "each market would have had considerably more outlets and owners if the 1960-80 growth had been maintained for the last twenty years (with the exception of Charlottesville). For example, Burlington would have had 84 outlets in 2000 if the prior growth rate had been maintained, instead of the 53 media outlets it actually had in 2000. The 1960-80 growth rate would have given Myrtle Beach 81 outlets and 43 owners in 2000, instead of the 38 outlets and 23 owners that it actually had as of 2000."[98] It is undeniable that Study # 1 indicates that the growth rate in both the number of media outlets and owners has slowed dramatically over the last twenty-years.

119. In *Radio Industry Review 2002: Trends in Ownership, Format and Finance* (Study # 11), Williams and Roberts concluded that the trend toward consolidation of radio station ownership has resulted in fewer owners at both the national and local levels. Their study found that the number of commercial radio stations increased merely 5.4% between March 1996 and

March 2002. However, the decline in the number of radio owners over the same time period is a staggering 34%! The study specifically shows that "the number of radio owners has declined by 6.7% from March 1996 to November 1997 (from 5,133 to 4,788 owners), by an additional 5.8% from November 1997 to November 1998 (from 4,788 to 4,512 owners), by another 11.2% from November 1998 to March 2000 (from 4,512 to 4,006 owners), and by 4.2% from March 2000 to March 2001 (from 4,006 to 3,836 owners). As of March 2002, there were 3,408 owners of commercial radio stations across the nation, for a cumulative decline in the number of owners of 34% since March 1996."[99]

120. Study # 11 also found that in each year from March 1996 to March 2002, "about 20% of radio stations have changed hands. As a result of this trading activity, there are now 50 radio station owners with 20 or more stations, compared to 25 in March 1996. Further, there continue to be changes in the composition of the top 50 radio group owners, generally reflecting mergers between companies that were previously among the top 50 radio owners. Also, the two largest radio group owners in 1996 consisted of fewer than 65 radio stations each. "[100] Presently, the two largest radio group owners control a staggering amount of radio stations. As of March 2002, Clear Channel Communications owns 1,156 and Cumulus Broadcasting, Inc. owns 251 radio stations; the third, fourth and fifth largest held 206, 184, and 100 respectively.[101] Williams and Roberts determined that the decline in the number of owners of radio stations nationally reflects mergers or acquisitions between existing owners that has resulted in larger radio group owners and more group-owned stations.

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98 *Id.* at 15-16.
99 *Radio Industry Review 2002: Trends in Ownership, Format and Finance,* Williams and Roberts, at 3 (September 2002).
100 *Id.* at 4.
101 *Id.*

121. The increase in market concentration is also apparent in the revenue share produced in both large and small markets. Williams and Roberts found that "in the 50 largest markets, on average, the top firm holds 35% of market revenue, the second firm holds 26%, and firms three and four split the next 25%. For the 100 smallest markets, on average, the first firm holds 54%, the second firm holds 27%, and the next two firms split 15%."[102] Furthermore, "in 180 of the 285 Arbitron radio markets (over 60% of the markets), one entity controls more than 40% of the market's total radio advertising revenue, and in 93 of these markets (23%) the top two entities control more than 80% of market revenue."[103] Williams and Roberts even admit that the increase in concentration "can largely be attributed to the relaxation of the local radio ownership rules required by the 1996 Telecom Act."[104] This study also makes the astounding finding that the "25 large, publicly-traded radio companies, which in total own some 3,750 radio stations," "generate more than 52% of total reported radio industry revenues."[105]

122. Both Studies # 1 and # 11 provide irrefutable evidence that an increase in concentration of owners has had a detrimental effect on competition in the radio industry. The consolidation has stifled the growth of media outlets and ownership of radio stations. A result, which is plainly obvious, is that barriers to ownership have increased as the number of owners has decreased to include only the elite. This clearly indicates that minority ownership is less likely to exist in the radio industry due to deregulation. A positive outcome of the radio deregulation exists only if its effects provide us with the information to recognize the detrimental results that would befall the television industry should the FCC eliminate the national TV ownership rule.

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[102] *Id.* at 6.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 13.

B. The National Television Ownership Cap is Necessary to Ensure Diversity of Viewpoint and Editorial Perspective.

123. Another negative outcome from the consolidation of owners in the radio industry is the reduction in viewpoint diversity. The FCC has traditionally been concerned with encouraging diversity in the ownership of broadcast stations so as to foster a diversity of viewpoints in the programming presented over the airwaves. Specifically, the FCC has been interested in the number of independent owners of radio stations in a local Metro market. Chart III, in Study # 11, "reveals that the decline in the number of radio owners nationally reflects a general trend across Metro markets, and not simply consolidations in a few large or small Metro markets."[106] The chart also shows that the number of owners declines, as the market gets smaller.

124. Chart XII of Study # 11 shows that the trend in the average number of listeners to radio has fallen slightly in the last few years. Since the fall of 1998, the average number of listeners per quarter hour has fallen about 3.5%. According to Arbitron's current data the average number of radio listeners has been declining at an average annual rate of 1% over the past 3 years. Although Study # 11 does not speculate on the underlying reasons for this current trend in radio listeners, it is likely that it is primarily linked to the deregulation of the radio industry. The fact that increased concentration would be associated with a reduction in listeners is also consistent with the prediction of the theoretical model developed in Study # 6.

C. Retention of the National Television Ownership Cap Serves to Promote Quality Children's and Educational Programming.

125. Study # 12, *Broadcast Television: Survivor in a Sea of Competition*, by Levy, Ford-Levine and Levine, presents evidence of diminished growth in the number of

broadcast television stations that is comparable to the evidence for slower growth in the number of radio outlets found in Study # 11. As indicated in Table 3, there has been a dramatic decline in the rate of growth in the number of broadcast television stations over the last ten years of the sample. The most drastic reductions occurred between 1995 and 2000. During those years, no additional VHF stations were created; the number of VHF stations dedicated to educational programming *declined* by 1.6%; and similar UHF stations grew by only 0.8%. It is disgraceful that in that five-year period, the total educational programming did not grow at all. Again, another FCC study fails to provide an explanation for its results. In this study, Levy et al. does not provide any rationale for the slower growth in the number of educational television stations, although relaxed regulation ultimately played a role.

Table 3
Growth in the Number of Television Stations

	75-80	80-85	85-90	90-95	95-100
Total	6.1%	18.4%	20.5%	6.2%	5.7%
VHF	2.6	2.6	4.8	2.4	0.0
Commercial	0.4	0.8	5.2	2.7	0.4
Educational	1.6	14.7	11.0	3.3	0.8
UHF	12.2	44.0	38.5	9.6	10.3
Commercial	13.5	66.5	50.1	9.9	14.2
Educational	10.5	14.9	16.6	8.9	0.8
Total Commercial	4.0	20.3	23.7	6.3	7.5
Total Educational	12.1	13.4	11.5	6.0	0.0

Source: Levy et al., 2002, Table 7.

126. It's no wonder that advocates for programming geared toward children are so concerned with the current NPRM. If consolidation has led to a decrease in educational programming, it is a natural extension that children's programming will suffer the same effects, if

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[106] *Id.* at 7.

it has not done so already. In response, a coalition of prominent public health, media research and other organizations had indicated in a joint letter to the FCC that deregulation may result in fewer programming choices for children. This coalition also expressed its disappointment "that the FCC has failed to consider the impact of these proposed changes on children. The history of children's television demonstrates that kids lose out when the marketplace alone determines programming."[107]

127. Once again, it is clear that viewpoint diversity is threatened by an increase in the concentration of owners. To eliminate the national TV ownership rule would mean to further diminish educational and children's programming, which are already endangered species. The public interest cannot best be served by such an outcome.

D. The Amount and Cost of Advertising on Television is Related to Levels of Media Concentration.

128. The *Theory of Broadcast Media Concentration and Commercial Advertising* (Study #6), by Cunningham and Alexander, makes several findings that indicate the negative effect an increase in concentration would have on advertising. In the first case analyzed in this study, an increase in industry concentration results in broadcasters taking a "profit-maximizing" approach, which leads to an increase in the fraction of broadcasting devoted to advertising.[108] Regardless of the consumer response, there will be a reduction "in the amount of non-advertising broadcasting consumed and supplied."[109] Higher levels of concentration can also result in "lower levels of advertising, higher prices, and a larger fraction of broadcast time devoted to advertising."[110] Consequently, we would experience the "*classic* market power result of fewer units sold at a

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[107] Broad Coalition Says Children Are Ignored in Proposed Media Deregulation, Children Now, *quoting* Patti Miller, Director of Children Now's Children & the Media program.
[108] *A Theory of Broadcast Media Concentration and Commercial Advertising,* Cunningham and Alexander (September 2002) at 1.
[109] *Id.* at 2.
[110] *Id.*

higher price and a crowding-out of programming by advertising."[111] The price the consumer pays for a higher concentration of broadcasters is an increase in advertising and a decrease in programming. Advertisers would also feel the negative effect of increased concentration because they would be faced with a decrease in the volume of advertising, yet an increase in the price of advertising per unit.

129. Cunningham and Alexander confirm the detrimental effect that an increase in concentration would have on public welfare. They concluded that an increase in concentration in broadcast media results in higher prices of goods and the crowding out of non-advertising broadcasting, which would likely lead to welfare losses for consumers.[112] Two likely results would occur. First, the consumer would be exposed to more advertising and less programming. A reduction in programming would likely lead to a decrease in the quality of that programming. This would be particularly evident in news broadcasting as there would be less time to devote to disseminating the "full" story to the viewing audience. Instead, viewers would be subject to endless sound bites. Second, the viewing audience may become so turned off from a deluge of advertisements that it would forgo TV broadcasting altogether. As we saw in Study # 3 the general public has no real substitute for TV news.[113] Therefore, an audience that forgoes TV news is not likely to substitute for another form of news, which means that we would be faced with a less informed public.

130. In Study # 11, Williams and Roberts confirm at least one element in the theoretical findings of Cunningham and Alexander. Chart XIII of Study # 11 shows that radio advertising prices have risen substantially since March 1996 with average prices increasing almost 90%. By contrast, the consumer price index increased only 16% in this time period. Radio advertising

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[111] *Id.*
[112] *Id.* at 23.

prices have clearly increased dramatically more than inflation since the passage of the Telecom Act. Although consolidation is an obvious possible explanatory factor, that study did not provide the analysis necessary to determine its exact role. Based on the findings of Study # 6, it is reasonable to interpret the change in rules, as dictated by the Telecom Act, is the culprit.

131. Another pertinent example of the impact of consolidation can be seen in Detroit. According to the Detroit Free Press, Viacom intends on ending local news operations at its two Detroit TV stations and letting WXYZ-TV (Channel 7) produce a newscast for one of them.[114] Channel 7 will produce a 60-minute newscast at 10:00 p.m. weekdays and a 30-minute newscast on Saturday and Sunday for Viacom's UPN affiliate, WKBD-TV (Channel 50), using Channel 7 employees and resources.[115] The obvious result is that there will be a reduction in competition and a loss of diversity of viewpoint since the local news will be created by only one source. Also, this action means that the stations will employ fewer people, thereby adding to the unemployment data plaguing this country.

132. The importance of the media ownership rules and the diversity of viewpoints they were designed to protect have not gone unnoticed by Congress. On June 29, 2001, a bipartisan group of 14 members of Congress sent a letter to FCC Chairman Powell reminding him that "the voice of local broadcasters not [be] stifled or silenced."[116] We are encouraged that Congress understands the magnitude of eliminating the national TV ownership rule and all other media ownership rules.

IX. CONCLUSION.

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[113] *See Consumer Substitution Among Media,* Waldfogel, September 2002; *see also A Critique of the FCC Studies on Media Ownership* at 9-12, Dean Baker (December 2002).
[114] AFTRA, *supra.*.
[115] *Id.*
[116] *See* Media's Big Fish Watch FCC Review Ownership Cap, David Lieberman, USA TODAY, July 8, 2001.

133. The Writers Guild of America, East and AFTRA are unequivocally opposed to the elimination or relaxing of the remaining media ownership rules that are under consideration pursuant to the current NPRM. Each of these rules was created with a vision toward the future and a watchful eye on the past. The wisdom in establishing rules that protect the public's interest in maintaining competition, localism and viewpoint diversity should not be lost in this hasty process to examine such rules. The dissemination of fair and accurate information from multiple outlets is a core element in building blocks of this nation. To deprive the public of this foundation is to enter into a slippery slope that will leave the public wondering whose "truth" is being told. The Court of Appeals for the District of Columbia only seeks a rational basis for maintaining the media ownership rules. This comment, along with the many comments filed by labor organizations, public interest groups and others provide the rationale for which the FCC can rely upon in upholding the current media ownership rules. We are confident that the FCC will safeguard the trust that the public has bestowed upon it.

Respectfully submitted,

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